

Before the
Federal Communications Commission
Washington, DC 20554

2001 NOV 25 AM 10:54

In the Matter of)
)
Petition for Reconsideration of the)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Children's Village Academy) File No. SLD-204351
Kinston, North Carolina)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)
Changes to the Board of Directors of the) CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)

ORDER ON RECONSIDERATION**Adopted: November 19, 2001****Released: November 20, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Petition for Reconsideration filed by Children's Village Academy (CVA), Kinston, North Carolina.¹ CVA seeks reconsideration of our denial of its request for review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, the petition is dismissed.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing

¹ Letter from Lavinia Greene-Hall, Children's Village Academy, to Federal Communications Commission, filed April 30, 2001 (Petition for Reconsideration).

² *Request for Review by Children's Village Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-204351, CC Dockets No. 96-45 and 97-21, Order, DA 01-794 (Com. Car. Bur. rel. March 30, 2001) (*Request for Review by Children's Village Academy*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.⁷

3. On the FCC Form 470, applicants must attest that any support they receive is conditional upon their "securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively."⁸ Similarly, on the FCC Form 471, applicants must certify that they have secured access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services."⁹ In the Commission's May 8, 1997 *Universal Service Order*, the Commission stated that applicants for schools and libraries discounts would be required to certify in their requests for services that "all of the necessary funding in the current funding year has been budgeted and will have been approved to pay for the 'non-discount' portion of requested connections and services as well as any necessary hardware, software, and to undertake the necessary staff training required in time to use the services effectively."¹⁰ The necessary resources certification requires applicants to examine their

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. §§ 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

⁸ See Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470) (September 1999) (FCC Form 470 Instructions), at Block 5, Item 23; see also SLD website, <<http://www.sl.universalservice.org>>.

⁹ See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification, OMB 3060-0806 (FCC Form 471) (September 1999) (FCC Form 471 Instructions), at Block 6, Item 25; see also SLD website, <<http://www.sl.universalservice.org>>.

¹⁰ *Universal Service Order*, 12 FCC Rcd at 9079, para. 577. See also 47 C.F.R. § 54.504(b)(1) (requiring applicants to provide information about equipment, services, training, and other facilities in place to make use of the services requested) and 47 C.F.R. § 54.504(b)(2) (requiring that each applicant's FCC Form 470 certify that "all of the necessary funding in the current funding year has been budgeted and approved to pay for the 'non-discount' portion

technology needs and available technological and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive. The review of these certifications by SLD to determine whether applicants have the necessary resources to make effective use of the services that they request is an integral part of SLD's responsibility for reviewing funding applications to ensure compliance with statutory requirements and Commission rules.¹¹ Also, SLD's review of applicants' necessary resources certifications is an important means to curb waste, fraud, and abuse in the schools and libraries universal service support mechanism.¹²

4. In our previous decision, we denied CVA's request for review and upheld SLD's determination that CVA had failed to demonstrate to SLD during its application review that CVA had all the resources necessary to make effective use of its requested services.¹³ In particular, we noted that CVA had failed to respond to several of SLD's requests for information in this regard.¹⁴

5. In its pending Petition for Reconsideration, CVA does not dispute that it failed to demonstrate that it had all necessary resources.¹⁵ CVA asserts that this failure was due to the irresponsibility of the employee who was assigned to handle CVA's application and that this employee has since been discharged.¹⁶ CVA therefore submits further information to demonstrate that it has all necessary resources and asks for consideration of this new evidence.¹⁷

6. Section 1.106 of the Commission's rules provides that a petition for reconsideration of an order denying an application for review will be entertained only if: 1) the petition relies on facts which have occurred or circumstances which have changed since the last opportunity to present such matters; or 2) the petition relies on facts unknown to the petitioner until after the last opportunities to present such matters could not, through ordinary diligence, have been learned prior to that opportunity.¹⁸ Although CVA does present new evidence,

of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively. . . ."). These requirements are referred to collectively hereinafter as the "necessary resources certifications."

¹¹ *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 423, 430, para. 14 (2000).

¹² See 47 C.F.R. § 54.702(h) (requiring that the Administrator's annual report to the Commission detail the Administrator's "administrative action intended to prevent waste, fraud, and abuse").

¹³ *Request for Review by Children's Village Academy*, paras. 6-8.

¹⁴ *Id.*, paras. 7-8.

¹⁵ Petition for Reconsideration, at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ See 47 C.F.R. § 1.106(b)(2).

including school budgets, invoices, and telephone bills, CVA does not argue that this is evidence that was unknown to it when it filed its Request for Review.¹⁹ Rather, CVA asserts that it was not aware that the information had been requested because of the errors of its employee.²⁰ However, a school is responsible for the errors of its employees in handling its application.²¹ We find that CVA's reconsideration petition fails to demonstrate that either of the two specified circumstances is present here. As a result, CVA's Petition for Reconsideration is subject to dismissal as repetitious pursuant to Section 1.106(b)(3).²²

7. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the Petition for Reconsideration filed by Children's Village Academy, Kinston, North Carolina, on April 30, 2001 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁹ Petition for Reconsideration, Attachments.

²⁰ Petition for Reconsideration, at 1.

²¹ See *Request for Review by Massachusetts Department of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149217, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 7775, para. 10 (Com. Car. Bur. 2001).

²² See 47 C.F.R. § 1.106(b)(3).